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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,239	08/24/2001	Blair D. Walker	001/017 (1-3) USA	3291
24955	7590	10/27/2008	EXAMINER	
ROGITZ & ASSOCIATES			DESAUTO, MATTHEW F	
750 B STREET				
SUITE 3120			ART UNIT	PAPER NUMBER
SAN DIEGO, CA 92101			3763	
			MAIL DATE	DELIVERY MODE
			10/27/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BLAIR D. WALKER; SCOTT M. EVANS

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Application 09/939,239  
Technology Center 3700

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Mailed: October 27, 2008

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Before KRISTA M. ZELE, *Deputy Chief Appeals Administrator.*  
ZELE, *Deputy Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received by the Board of Patent Appeals and Interferences on September 22, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**EXAMINER'S CONSIDERATION OF REPLY BRIEF**

A Reply Brief was filed on June 24, 2008, in response to the Supplemental Examiner's Answer mailed June 13, 2008.

Title 37, Code of Federal Regulations, §41.43 states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Communication mailed September 05, 2008, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP§ 1208, part II. A Supplemental Examiner's Answer requires a Director or designees approval.

**CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to vacate the Communication mailed September 05, 2008; and,
- 2) to generate and mail either:
  - a) a revised Communication properly acknowledging to the Reply Brief dated June 24, 2008 in accordance with MPEP§ 1208, part II.;

OR

b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate; and,

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797

KZ/MAT

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